

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

STATE OF OHIO,  
EX REL TED MARCUM,

Petitioner, : Case No. 3:17-cv-437

- vs -

District Judge Walter H. Rice  
Magistrate Judge Michael R. Merz

SHERIFF DAVE DUCHAK, et al.,

Respondents.

---

---

**REPORT AND RECOMMENDATIONS ON REQUEST FOR  
TEMPORARY PROTECTION ORDER**

---

---

This case is before the Court Petitioner's Motion for Temporary Restraining Order (part of ECF No. 3). Because the case has been removed to federal court, the Motion is governed by Fed. R. Civ. P. 65.

Mr. Marcum seeks an order to protect him "from being harmed, harassed, or retaliated against by any named Respondent and from any employee or officer of the Miami County Sheriff's Department." As grounds therefore he alleges he has previously suffered infliction of excessive force by employees of the Sheriff's Department.

The United States District Court does not have jurisdiction to issue temporary protection orders of the sort authorized by Ohio law and apparently envisioned by Mr. Marcum. His allegations are insufficient to support a temporary restraining order against persons who are not parties for the simple reason that they have not been served and given an opportunity to respond.

As to the named Respondents, Marcum does not allege that any of them have inflicted excessive force on him in the past or have threatened to do so recently.

Accordingly, it is respectfully recommended that Petitioner's request for a temporary protection order be denied.

January 11, 2018.

s/ *Michael R. Merz*  
United States Magistrate Judge

### **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by mail. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).